

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ICU MEDICAL, INC.,

Plaintiff,

v.

RYMED TECHNOLOGIES, INC.,

Defendant.

Civil Action No. 07-468-JJF

**DECLARATION OF ALISON D. BURCAR IN SUPPORT OF PLAINTIFF ICU
MEDICAL, INC.'S OPPOSITION TO RYMED TECHNOLOGIES, INC.'S MOTION
FOR REARGUMENT OF MEMORANDUM ORDER DENYING MOTION TO
TRANSFER VENUE**

I, Alison D. Burcar, declare:

I am currently Vice President of Marketing for ICU Medical, Inc. ("ICU"). I submit this declaration in support of ICU's Opposition to RyMed Technologies, Inc.'s ("RyMed") Motion for Reargument of Memorandum Order Denying Motion to Transfer Venue. I have personal knowledge of all the facts contained herein and, if called to testify, could and would competently testify thereto.

1. I have been employed with ICU since 1995. I became Vice President of Marketing in August 2002, after having been Marketing Operations Manager since March 1998.

2. Since joining ICU in 1995, I have been involved in medical product sales and marketing. I have developed an expertise in medical sales and marketing, particularly in the

needle-free valve industry. Since 2002, ICU has sold a swabable, one-piece, needle-free valve called the MicroCLAVE[®] Connector.

3. On January 28, 2008, Brent Nibarger, President of Fluidnet Corporation ("Fluidnet"), called me to discuss Fluidnet's selection of a needleless I.V. connector for use with a new Fluidnet pump. He said that he was performing his "due diligence" on needleless connectors. Until that call, I had not spoken with Mr. Nibarger for over four months.

4. Although Fluidnet's pump was for use with Y-site adaptors — where the amount of fluid displacement (negative, positive, or neutral) is not important — Mr. Nibarger specifically wanted to discuss this concept as it relates to connectors. After I pointed out that fluid displacement is not an important feature in Y-site adaptors, Mr. Nibarger confirmed that he did not think so, but wanted to check anyway. I then discussed the advantages of using the ICU Y-CLAVE due to published literature demonstrating the superior infection control attributes resulting in better patient outcomes.

5. Mr. Nibarger then asked me about the RyMed valve. I told Mr. Nibarger that to the best of my knowledge, RyMed does not make a Y-Site valve. In response, I indicated that RyMed's InVision Plus Neutral valve had some coring problems based on tests conducted by ICU. Our comparative testing of the valve demonstrated that after a few activations, the green plug of the injection site would core out and small pieces of the plug would travel into the fluid path. This testing was based on the current approved protocol that ICU uses to validate the CLAVE connector. I never said that RyMed's InVision Plus valve was recalled from Duke University and the Florida Memorial Health System. I agreed that facilities such as Vanderbilt University and Duke were either using or considering the InVision based on Mr. Nibarger's direct inquiry about the specific facilities; but I did not initiate the discussion about particular

facilities. I recall that this discussion was prompted by Mr. Nibarger telling me that their Medical Director at Fluidnet was associated with Vanderbilt who told him that Vanderbilt was either using or considering the RyMed Product.

6. I also pointed out that RyMed had some problems with the Food and Drug Administration ("FDA") concerning the manufacturing of its InVision Plus Neutral valve and directed Mr. Nibarger's attention to the FDA website. I did not say, however, that RyMed would be shut down by the FDA soon.

7. Finally, I said that ICU enforces its patents and that it believes RyMed's InVision Plus valve, as designed, infringes ICU's patents. I did not say that ICU had RyMed so mired in expensive patent litigation that RyMed can't see the daylight.

8. Before the end of the call, I agreed to provide Mr. Nibarger with some scientific literature concerning the infection control benefits of the ICU CLAVE. Attached as Exhibit A is a true and correct copy of my follow-up e-mail to Mr. Nibarger.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on February 21, 2008 in San Clemente, California.


Alison D. Burcar

EXHIBIT A

Alison Burcar

From: Alison Burcar
Sent: Monday, January 28, 2008 10:55 AM
To: Brent Nibarger; Rich Costello
Subject: RE: Out of the office
Attachments: Asnani SHEA 2007 Hahneman Smartsite-CLAVE.pdf; Bouza - JHI 2003 CLAVE Reduce Contamination.pdf; Maragakis ICHE - 2006 Johns Hopkins SmartSite Plus Infection.pdf; Ryder SHEA 2007 Poster.pdf

Brent, attached is the recent published literature pointing to the CLAVE technology superior infection control benefits. Rich will work with you on the pricing for the Y-CLAVE.

Alison Burcar
Vice President of Marketing
ICU Medical, Inc.

From: Brent Nibarger [mailto:bnibarger@fluidnet.net]
Sent: Friday, January 25, 2008 7:20 PM
To: Alison Burcar
Subject: Re: Out of the office

Cell phones while traveling work really well.....just want to evaluate product options and pricing on OEM basis for inclusion in a few 100k IV sets/yr . Have many questions regarding all the noise around positive, negative and neutral fluid displacement and blood reflux. BBraun, Alaris, Baxter, Medegen, Rymed have all been very responsive.

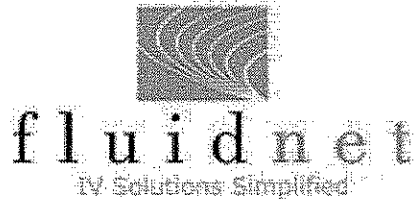
I guess you can send email proposal or call whenever you can fit us in.

On Jan 25, 2008, at 5:32 PM, Alison Burcar wrote:

Brent - I am out of the office for the next three weeks traveling and presenting at our national sales meetings. Is there anything we can get going via email - sorry to keep missing you.

Alison Burcar
Vice President of Marketing
ICU Medical, Inc.

2/20/2008



Brent Nibarger - President
Fluidnet Corporation

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2/20/2008